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on July 19, 2001

Date of Deposit



John G. Rauch, Reg. 37,218

Name of applicant, assignee or
Registered Representative

Signature

7/19/2001

Date of Signature

PATENT
Case No. 10506/3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Rafie, et al.)
Serial No. 09/764,202) Examiner:
Filing Date: January 17, 2001) Group Art Unit No.: 2631
For CARRIER PHASE RECOVERY)
SYSTEM FOR ADAPTIVE BURST)
MODEMS AND LINK HOPPING)
RADIO NETWORKS)

**AFFIDAVIT OF FACTS IN SUPPORT OF FILING
ON BEHALF OF OMITTED INVENTOR TUSHAR SHAH (37 C.F.R. 1.47)**

This declaration is made as to the facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the omitted Tushar Shah for the above-identified patent application. This declaration is being made by a person having first-hand knowledge of the facts recited herein.

1. I, Richard Silverstein, am the Director of Business Development for Caly Networks, the owner of the above-identified patent application.



2.

Tushar Shah is a former employee of Caly Networks.

3. On or about January 10, 2001, Manouchehr S. Rafie contacted Mr. Shah and requested that he visit the offices of Caly Networks to review the above-identified patent application.

4. On January 16, 2001, inventors Manouchehr S. Rafie, Syang-Myau Hwang and Jun Lu, all employees of Caly Networks, signed a Declaration For Patent Application and an Assignment for the above-identified patent application.

5. On January 16, 2001, Mr. Shah reviewed the patent application in the offices of Caly Networks. Following his review, Mr. Shah stated to me that the patent application was acceptable but requested legal review of the assignment document prior to execution of either the Declaration For Patent Application or the Assignment.

6. On January 26, 2001, I forwarded the assignment document to Mr. Shah. During a subsequent telephone conversation, he stated to me that the assignment document was acceptable to his counsel and that we should schedule a time to obtain his signature.

7. Based on this representation, over the next three months I made several attempts to contact Mr. Shah by telephone and electronic mail, including two calls to Mr. Shah's attorney.

8. On April 16, 2001, I forwarded correspondence to Mr. Shah to his current place of employment, Redwave Networks. This correspondence was sent via Federal Express to 2001 Gateway Boulevard, Suite 455 East, San Jose, California 95110. A copy of this correspondence was sent to Mr. Shah's attorney, Warren Lazerow, care of Brobeck Phleger & Harrison LLP, Two Embarcadero Place, 2200 Geng Road, Palo Alto, CA 94303. I subsequently received signed acknowledgements that both Redwave Networks and Brobeck Phleger & Harrison LLP received the correspondence.



MARK OFF 9. On May 14, 2001, Josef Berger, President and Chief Executive Officer of Caly Networks, and Andrew Fine, President and Chief Executive Officer of Redwave Networks, met to discuss the matter of Mr. Shah executing the patent application. Caly Networks was informed by Mr. Fine that the parties will not be able to resolve the issue at this time and that Mr. Shah will be unavailable to sign the documents.

10. To date, I have not received an executed Declaration from Mr. Shah. The time to respond to the Notice to File Missing Parts for the above-identified patent application is July 27, 2001. Since the end of the period to respond to the Notice to File Missing Parts is approaching, Mr. Shah has not responded to the repeated requests for execution of the Declaration, and Calyx Networks has been informed by Mr. Shah's current employer that Mr. Shah will be unavailable to sign the documents, Mr. Shah is unavailable or refuses to sign the Declaration.

The undersigned further declares that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon. 

Dated: 7/11/01

con.

Richard Silverstein

I, CONNIE GROFF, A Notary Public in and for the County and State aforesaid, do hereby certify that Richard Silverstein, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth. 17

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this 11th day of July, 2001.

